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In re application of

Paulus De Lange et al.

Serial No. 09/763,355

Filed: February 21, 2001

For: FLUIDIZED BED METHOD AND REACTOR FOR THE TREATMENT OF CATALYSTS  
AND CATALYSTS CARRIERS

DECISION ON  
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF  
THE OFFICE ACTION mailed January 14, 2005.

On June 18, 2004, a non-final office action was mailed by the examiner, rejecting claims 1-5 under 35 USC 102 over two separate references. Applicants responded to this office action with a response filed on October 29, 2004. This response contained an amendment to independent claim 1 and cancelled dependent claim 4. The subject matter of claim 4 was inserted into claim 1. A final rejection was then mailed January 14, 2005 rejecting claims 1-3, 5 and 16 over a newly cited reference.

On February 9, 2005, the instant petition under 37 CFR 1.181 was timely filed to formally request the withdrawal of finality of the January 14, 2005 office action.

Applicants position for the withdrawal of the finality is that the new grounds of rejection in the final office action were not necessitated by Applicant's amendments to the claims.

## DECISION

Section 706.07 of the MPEP states:

**706.07(a) Final Rejection, When Proper on Second Action**

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Turning to the rejections in the first office action, it is noted that the references relied upon did not meet the claimed limitations found in originally filed claim 4 regarding the calcination and/or activation of the catalysts. These limitations were then added to independent claim 1 which overcame the originally relied upon references. Accordingly, the newly applied rejection in the final office action was not necessitated by the amendment because such limitations were present in the originally filed claims.

Because the new grounds of rejection was not necessitated by amendment, the petition for withdrawal of finality is **GRANTED**

Applicants have filed an amendment in response to the outstanding office action. This amendment will be treated as a response to a non-final office action and will be entered. The examiner will take appropriate action in response to the amendment.



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